

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 11-2223

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John L. Lotter

Petitioner - Appellant

v.

Robert Houston, Warden, Tecumseh State Correctional Center

Respondent - Appellee

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Appeal from U.S. District Court for the District of Nebraska - Lincoln  
(4:04-cv-03187-RGK)

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**JUDGMENT**

Before WOLLMAN, MURPHY and BYE, Circuit Judges

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

Judge Bye would grant a certificate of appealability on the following claims:

1. The ex parte communication between the trial judge, the prosecutor, and Thomas Nissen's attorney;
2. The prosecution's representations concerning whether it had reached a plea agreement with Nissen on the first day of trial;
3. The trial court's denial of Lotter's motion for a continuance;
6. Whether Lotter's post-conviction counsel provided ineffective assistance; and
7. Lotter's actual innocence claims.

August 23, 2011

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans